

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

United States of America,

Plaintiff,

v.

Civil Action No.: 8:19-CV-302 [BKS/DJS]

Ford F-350 Truck,
VIN: 1FT8W3DT8HEB97523;
Stealth Cargo Trailer,
VIN: 52LBE202XBE006881; and
3,000,000 Cigarettes.

Defendants.

VERIFIED COMPLAINT FOR FORFEITURE *IN REM*

The United States of America brings this verified complaint for forfeiture *in rem* against the above-captioned assets (the “defendant property”) and alleges as follows:

NATURE OF THE ACTION

This is an action *in rem* brought pursuant to 49 U.S.C. § 80303, 18 U.S.C. §§ 2342 and 2344, and Rule G of the Supplemental Rules for Certain Admiralty or Maritime Claims and Asset Forfeiture Actions. Forfeiture is sought of the 2017 Ford F-350 truck and Stealth Intruder cargo trailer pursuant to 49 U.S.C. § 80303, as they were used to facilitate the possession and transportation of the cigarettes contrary to 49 U.S.C. § 80302. Forfeiture is sought of the 3,000,000 contraband cigarettes pursuant to 18 U.S.C. §§ 2342 and 2344, as they were knowingly possessed and transported contrary to law.

THE PARTIES

1. Plaintiff is the United States of America.

2. The defendants in this case, which are in the custody of the United States, are one Ford F-350 Truck, one Stealth Intruder cargo trailer, and 3,000,000 contraband cigarettes.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1345 and 1355.

4. This Court has *in rem* jurisdiction over the defendant property pursuant to 28 U.S.C. § 1355(b)(1).

5. Venue is proper in this district pursuant to 28 U.S.C. §§ 1355 and 1395.

APPLICABLE LAW

6. The Contraband Cigarette Trafficking Act, Title 18, United States Code, Section 2342(a), makes it unlawful to knowingly ship, transport, receive, possess, sell, distribute or purchase “contraband cigarettes.”

7. Contraband cigarettes” are defined as a quantity in excess of 10,000 cigarettes which bear no evidence of the payment of applicable State cigarette taxes in the State where such cigarettes are found, if the State requires a stamp, impression, or other indication to be placed on packages of cigarettes to evidence payment of cigarette taxes, which and are in possession of any person other than a person holding a federal permit, or their agent, a common or contract carrier transporting the cigarettes under a proper bill of lading, or a licensee or other person otherwise authorized to account for and pay cigarette taxes imposed by such State and who has complied with those payment requirements with respect to the cigarettes involved. Title 18, United States Code 2341(2).

8. A person transporting cigarettes must have a proper bill of lading or freight bill stating the quantity, source, and destination of the cigarettes. 18 U.S.C. § 2341(2)(B). Otherwise,

a transporter must be a licensed person and registered with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), the State of New York, and by the Attorney General of the United States. Title 18, United States Code, Section 2341(D).

9. Pursuant to Section 903(a)(2) of the Federal Food Drug and Cosmetic Act regarding misbranded tobacco products, a tobacco product shall be deemed to be misbranded unless it bears a label containing certain requirements.

10. Pursuant to New York State Tax Law § 471, all packs of cigarettes possessed or distributed in the State of New York must bear a tax stamp.

FACTS

11. On October 18, 2018, Homeland Security Investigations' agents ("HSI agents") observed a driver matching the physical description of Claimant, Ronald Sunday ("Sunday"), driving a black Ford F-350 ("the defendant vehicle"), approximately one mile from the international border between New York State and Quebec, Canada near the St. Regis River and Akwesasne Mohawk Nation.

12. The Akwesasne Mohawk Nation straddles the intersection of international borders and is divided by the St. Lawrence river.

13. The area of the Akwesasne Mohawk Nation has no border crossing or point of entry.

14. The defendant vehicle was registered to Sunday's wife, Norma Tarbell-Sunday ("Tarbell-Sunday").

15. The defendant vehicle was equipped with tinted windows and a cap, and was towing a Stealth Intruder cargo trailer ("the defendant trailer").

16. The defendant trailer was registered to Sunday.

17. The defendant vehicle and trailer were first observed near a location linked to an unlicensed cigarette factory, and departed the area approximately one hour later, driven by Sunday.

18. HSI agents noted that Sunday was taking a rural southwesterly route of travel, though there were other available routes that were faster and more direct.¹

19. HSI agents stopped the defendant vehicle and trailer on State Route 11B in Bangor, Franklin County, New York.

20. The driver of the defendant vehicle was Ronald Sunday and the passenger was Collin Sunday, Ronald Sunday's son.

21. The odor of cigarette tobacco was emanating from the defendant vehicle and trailer.

22. Sunday stated that he was transporting 300 boxes of cigarettes to Buffalo, New York.

23. Sunday did not produce the paperwork required to transport cigarettes.

24. Upon a search of the defendant vehicle and trailer, agents observed the following:
- a. Several cases of cigarettes in the back of the defendant vehicle covered in black sheets.
 - b. The defendant trailer and vehicle contained a total of 300 cases consisting of at least 50 plastic cartons, each carton containing approximately 200 cigarettes, totaling approximately 3,000,000 contraband cigarettes.
 - c. The cases were marked with letters written in black marker, to identify the tobacco blend (for example, MB stood for Menthol Blend and LTB meant Light Tobacco or Smooth Blend).

¹ Smugglers frequently take circuitous routes of travel to avoid law enforcement detection.

- d. The cases were not deemed to be proper cases of cigarettes from a licensed manufacturer.
- e. The cartons lacked a State of New York tax stamp, as required under New York State Tax Law § 471.
- f. Inside the cases were stacks of plastic bags, each containing cigarettes.
- g. The plastic bags found in the cases did not bear a brand name approved by the Attorney General of the State of New York.
- h. No manufacturer's federally issued license number was on the packaging.

25. Sunday, the documented owner of the defendant trailer, is known to law enforcement because he has previously been stopped while smuggling cigarettes.

26. Sunday stated that a "corrupt and dirty" ATF agent had seized cigarettes from him previously and asked agents if "the ATF informant" had informed law enforcement about him.

27. The Federal Excise tax loss from the seizure of the 300 cases of cigarettes was approximately \$150,990.²

28. The New York State tax loss from the seizure of the 300 cases of cigarettes was approximately \$652,500.³

29. The total combined tax loss for the Contraband Cigarettes is \$803,490.

30. In October 2013, Sunday was stopped by the New York State Police transporting approximately 500,000 contraband cigarettes using a black Dodge Ram pickup truck with a cap and dark tinted windows, registered to Tarbell-Sunday.

² The Federal Excise Tax (FET) imposed on a pack cigarettes is \$1.0066 per pack. In this case, agents seized approximately 15,000 cartons of cigarettes. Assuming each carton contains 10 packs of cigarettes, the FET tax loss from the 300 cases was approximately \$10.066 per carton, or \$150,990.

³ The New York State tax imposed on a pack of cigarettes is \$4.35 per pack. In this case, agents seized approximately 15,000 cartons. Assuming each carton contains 10 packs of cigarettes, the New York State tax loss from the 300 cases was approximately \$43.50 per carton, or \$652,500.

CONCLUSION

31. As required by Supplemental Rule G(2)(f), the facts set forth above support a reasonable belief that the government will be able to meet its burden of proof at trial.

WHEREFORE, pursuant to Supplemental Rule G, plaintiff the United States of America, respectfully requests that the Court:

- (1) Issue a Warrant of Arrest *In Rem*, in the form submitted with this Complaint;
- (2) Direct any person having any claim to the defendant property to file and serve their Verified Claims and Answers as required by 18 U.S.C. § 983(a)(4) and Supplemental Rule G;
- (3) Enter judgment declaring the defendant property to be forfeited and condemned to the use and benefit of the United States; and
- (4) Award such other and further relief to the United States as it deems proper and just.

Dated: March 5, 2019

Respectfully Submitted,

GRANT C. JAQUITH
United States Attorney

By: /s/ Mary E. Langan
Mary E. Langan
Assistant United States Attorney
Bar Roll No. 518971

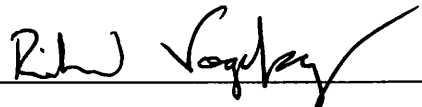
VERIFICATION

STATE OF NEW YORK)
) ss:
COUNTY OF St. LAWRENCE)

Richard L Vogelzang being duly sworn, deposes and states:

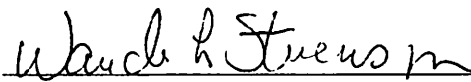
I am a Special Agent with Homeland Security Investigations. I have read the foregoing Complaint for Forfeiture and assert that the facts contained therein are true to the best of my knowledge and belief, based upon knowledge possessed by me and/or on information received from other law enforcement officers.

Dated this 5th day of March, 2019.



Richard L. Vogelzang, Special Agent
Homeland Security Investigations

Sworn to and subscribed before me this 5th day of March, 2019.



Notary Public

WANDA L. STEVENSON
Notary Public State of New York
No. 01ST6223231
Qualified in St. Lawrence County
Commission Expires June 7, 2022

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

UNITED STATES OF AMERICA

(b) County of Residence of First Listed Plaintiff Onondaga
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
Mary E. Langan, Assistant U.S. Attorney (315) 448-0650
United States Attorney's Office, 100 South Clinton Street
Syracuse, New York 13261

DEFENDANTS

Ford F-350 Truck, VIN: 1FT8W3DT8HEB97523; Stealth Cargo
Trailer, VIN: 52LBE202XBE006881; and 3,000,000 Cigarettes

County of Residence of First Listed Defendant Franklin
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|--|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated <i>or</i> Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated <i>and</i> Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input checked="" type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
49 U.S.C. § 80303, 18 U.S.C. §§ 2342 and 2344

Brief description of cause:

Seizure of truck, trailer used to smuggle cigarettes and contraband cigarettes**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$
CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

03/05/2019

s/Mary E. Langan

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT WAIVED APPLYING IFP _____ JUDGE BKS MAG. JUDGE DJS

8:19-CV-302

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